IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:

JAMES N. POURDAS,

Debtor(s).

In Proceedings
Under Chapter 7

Case No. 95-32397

CAROL PRATT and KENNETH PRATT, individually, and CAROL PRATT and KENNETH PRATT, as Parents and Next Friends of BRANDON JOSEPH PRATT, a Minor,

Plaintiff(s),

vs.

JAMES N. POURDAS,

Defendant(s),

Adversary No. 96-3072

OPINION

A Granite City, Illinois, ordinance provides that no person shall possess a pit bull dog within city limits for a period of more than forty-eight hours without obtaining a license. In order to obtain a license, the owner must file with the city clerk an application for a license to possess the pit bull dog. The application must be accompanied by, among other things, evidence of insurance coverage for any injury, damage or loss caused by the pit bull dog. While no specific dollar amount of insurance is

[1]Granite City Ordinance 6.10.020(A) provides that:

> No person shall possess any pit bull dog for a period of more than forty-eight hours without having first obtained a license therefor from the city.

Granite City, Il., Ordinance 6.10.020(A) (October 1989).

[2]Granite City Ordinance 6.10.020(B)(4) states in pertinent part:

> An application for a license to possess a pit bull dog shall be filed with the city clerk on a form prescribed and provided by the city clerk and shall be accompanied by all of the following:

required, the ordinance provides that the insurance must be in an amount not less than $300,000.00.

James Pourdas ("debtor"), a Granite City resident, owned a pit bull dog. Debtor' s pit bull, without provocation, attacked a three year-old child in a public alleyway, causing injuries. Debtor had not obtained a license for ownership of the dog and did not have at least $300,000.00 worth of insurance coverage at the time of the attack.

The child and his parents, plaintiffs in the instant case, filed a "Petition for Finding of a Vicious Dog" in the Third Judicial Circuit, Madison County, Illinois. A full and complete hearing on plaintiff's petition was held on June 7, 1993. Pursuant to an Agreed Order signed by both plaintiffs and debtor on that date, debtor's pit bull was found to be a vicious animal as defined by Illinois statute, and the dog was euthanized.

. . .

> 4. A certificate of insurance evidencing coverage in an amount not less than three hundred thousand dollars providing coverage for any injury, damage, or loss caused by the pit bull dog. . . .
>
> Granite City, Il., Ordinance 6.10.020(B)(4) (October 1989).

[3]Id.

[4]Although the Madison County Circuit Court Order dated June 7, 1993 does not specify which Illinois statute it relied on in determining that the pit bull was a "vicious animal," the Court presumes that the Circuit Court relied on 510 ILCS 5/15(a), which states in pertinent part:

> § 15. (a) For purposes of [the Animal Control Act]:
> (1) "Vicious dog" means:
> (i) Any individual dog that when unprovoked inflicts bites or attacks a human being or other animal either on public or private property.
> (ii) Any individual dog with a known propensity, tendency or disposition to attack without provocation, to cause injury or to otherwise endanger the safety of human beings or domestic animals.
> (iii) Any individual dog that has as a trait or characteristic and a generally known reputation for viciousness, dangerousness or unprovoked attacks upon human beings or other animals, unless handled in a particular manner or with special equipment.
> (iv) Any individual dog which attacks a human being or domestic animal without provocation.
> (v) Any individual dog which has been found to be a "dangerous dog" upon 3 separate occasions.
>
> No dog shall be deemed "vicious" if it bites, attacks, or menaces a

In addition, as a result of the attack, debtor was found guilty, on June 14, 1994, of violating an ordinance entitled "Dogs Running at Large."

On December 9, 1993, plaintiffs filed a complaint against the debtor in the Circuit Court of Madison County for violation of the Illinois Dog Bite Statute. On September 6, 1995, they received a default judgment against debtor in the amount of $150,000.00.

Thereafter, debtor filed a Chapter 7 petition in bankruptcy. The plaintiffs then filed this complaint to determine dischargeability under 11 U.S.C. § 523(a)(6) and moved for entry of summary judgment.

Plaintiffs raise a two-fold argument in their motion for summary judgment. They argue first that the debtor's failure to procure homeowner's insurance in an amount not less than $300,000.00 constitutes a willful and malicious injury, rendering the $150,000.00 judgment plaintiffs received against debtor nondischargeable pursuant to 11 U.S.C. § 523 (a)(6). Next, plaintiffs argue that the debtor's ordinance and statutory violations also constitute willful and malicious injuries under § 523(a)(6).

Bankruptcy Code § 523(a)(6)provides that:

> A discharge under section 727. . . does not discharge an individual debtor from any debt . . . for willful and malicious injury by the debtor to another entity or to the property of another entity.

11 U.S.C. § 523(a)(6). The courts are divided as to the meaning of "willful" and "malicious" within the context of § 523(a)(6). "Much of the struggle has centered on the degree to which an intent to harm or the inevitability of harm is a component of one or both words." In re Knapp, 179 B.R. 106, 108 (Bankr. S.D. Ill. 1995).

> trespasser on the property of its owner or harms or menaces anyone who has tormented or abused it or is a professionally trained dog for law enforcement or guard duties. Vicious dogs shall not be classified in a manner that is specific to breed . . . .

510 ILCS 5/15(a)(1)(1993).

[5]That statute provides, "If a dog or other animal, without provocation, attacks or injures any person who is peaceably conducting himself in any place where he may lawfully be, the owner of such dog or other animal is liable in damages to such person for the full amount of the injury sustained." 510 ILCS 5/16 (1993).

In Matter of Scarlata, 979 F.2d 521 (7th Cir. 1992), the Seventh Circuit let stand decisions of the bankruptcy and district courts that a debtor did not act maliciously because his conduct would not "automatically or necessarily" injure the plaintiff. Id. at 526-28. However, the court refused to define "malice," terming it "a difficult question of first impression" and finding that the issue was not squarely before it. Id. Likewise, the court refused to determine whether malice requires the sort of actions that would "automatically or necessarily" harm the creditor, reasoning that the appellant had not properly identified and presented as error the district court's application of this standard. Id.

In a subsequent decision, the Seventh Circuit adopted a liberal definition of malice without expressly determining whether malice requires that the act "automatically or necessarily" cause injury. In Matter of Thirtyacre, 36 F.3d 697, 700 (7th Cir. 1994), the Court of Appeals stated:

> We give effect to the words of the statute by viewing their plain meaning. "Under § 523 (a)(6) of the Bankruptcy Code, willful means deliberate or intentional . . . [and] [m]alicious means in conscious disregard of one's duties or without just cause or excuse; it does not require ill-will or specific intent to do harm."

Id. (quoting Wheeler v. Laudani, 783 F.2d 610, 615 (6th Cir. 1986) (citations omitted)). In adopting this definition of malice, the Court rejected the more onerous standard that requires a showing of specific intent to do harm. In re Knapp, 179 B.R. at 108 (citations omitted). Consequently, "a plaintiff 'need not show that the defendant acted with specific ill will or evil motive, or that the act was specifically intended to cause unlawful consequences. Rather, the plaintiff need only show that the defendant acted intentionally and without just cause.'" Id. (citations omitted).

Summary judgment is appropriate only where the record shows that there is no genuine issue as to any material fact. Fed.R.Civ.P. 56(c). In the present case, the Court cannot say, based on the record before it, whether debtor's failure to procure insurance was or was not "willful" and "malicious" as defined by the Seventh Circuit in Matter of Thirtyacre. Questions of fact preclude the entry of summary judgment. The Court is particularly interested in hearing the testimony of defendant as to why he had not obtained the required insurance, as well as any other factual evidence that would aid the Court in determining whether debtor's failure to procure insurance was in "conscious disregard of his duties" or "without just cause or

excuse."

Summary judgment is likewise inappropriate with respect to plaintiffs' argument that any violation of statutory law (or any violation of city ordinance law) constitutes a willful and malicious act under § 523(a)(6). Plaintiffs rely on In re Clayburn, 67 B.R. 522 (Bankr. N.D. Ohio 1986) in arguing that "any unlawful conduct which gives rise to a debt is considered to be malicious." Id. at 525. Clayburn, however, was reversed on appeal. In re Clayburn, 89 B.R. 629 (N.D. Ohio 1987). The district court disagreed with the bankruptcy court's conclusion that any statutory violation constitutes willful and malicious conduct, finding that "[t]o carry [the bankruptcy court's] analysis to its logical conclusion, any violation of the law resulting in civil liability would not be dischargeable under § 523(a)(6)." Id. at 631. This Court agrees that a statutory violation, in and of itself, is insufficient to establish willful and malicious conduct. Plaintiffs, therefore, must offer further proof, by way of additional evidence or testimony, for the Court to determine whether the debtor acted wilfully and maliciously. The totality of the circumstances involved, including evidence of the debtor's conduct or knowledge, is crucial to this determination.

For the reasons stated, the Court finds that plaintiffs' motion for summary judgment must be denied.

SEE WRITTEN ORDER.

ENTERED: October 30, 1996

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[6]The Court recognizes the split of authority on the issue of whether failure to carry insurance is, in and of itself, a willful and malicious injury. A majority of courts considering the issue have concluded that failure to procure insurance is not willful and malicious. See, e.g., In re Hall, 194 B.R. 580, 582 (W.D. Mich. 1996); In re Bailey, 171 B.R. 703, 705-06 (Bankr. N.D. Ga. 1994) (citations omitted); In re Kemmerer, 156 B.R. 806, 809 (Bankr. S.D. Ind. 1993) (citations omitted). In contrast, the minority position emphasizes the foreseeability that the plaintiff will be injured and, absent insurance coverage, will not be compensated for his or her injury. See, e.g., In re Strauss, 99 B.R. 396, 400 (N.D. Ill. 1989); Matter of Ussery, 179 B.R. 737, 741-43 (Bankr. S.D. Ga. 1995). Courts adopting the minority view focus on the plaintiff's right to insurance benefits rather than on the injury to plaintiff's person. The Court finds it unnecessary to adopt a per se rule either way and finds instead that "the application of § 523(a)(6) should be circumstance specific rather than categorical." In re Knapp, 179 B.R. at 109 (citations omitted). See also Matter of Thirtyacre, 36 F.3d at 700 (whether an actor behaved wilfully and maliciously is ultimately a question of fact reserved for the trier of fact).

/s/ KENNETH J. MEYERS
UNITED STATES BANKRUPTCY JUDGE